IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1492 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHANUBAHEN WF/O UTTAMBHAI CHHAGANBHAI PATEL

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 1492 of 2003

MR CHETAN B RAVAL for Petitioner No. 1

MS HARSHA DEVANI, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 19/05/2003

ORAL JUDGEMENT

1. The petitioner is a lady - detenue. By filing this petition, the petitioner has challenged her detention order dated 14-11-2002 by which she is detained as "Bootlegger" under the Prevention of Anti Social Activities Act, 1985 ("PASA" for short). Along with the detention order, the petitioner was also served with the

grounds of detention on the same date. In the grounds of detention there is a reference of about three criminal cases, which are filed against the petitioner under the Bombay Prohibition Act. The detaining authority after considering the aforesaid criminal cases as well as after considering the statement of witnesses has passed the aforesaid order of detention. The said order is challenged by the petitioner on various grounds.

2. The learned advocate for the petitioner submitted that the last criminal case is registered against the petitioner on 01-10-2002 while the detention order is passed on 14-11-2002. It is submitted that there is delay of about one and half months in passing the detention order from the alleged last incident. In this behalf, learned advocate for the petitioner relies on the decision of this Court in Special Civil Application No.5321 of 2002 (Coram : R.P.Dholakia, J) and particularly para 4 of the said judgement which reads as under:-

> "4. It appears that the last offence is registered against the detenu on 28/3/2002 and the order of detention has been passed on 30/04/2002 and hence, there is a delay in passing the order of detention. No affidavit has been filed either by the detaining authority or by the State explaining satisfactorily the delay caused in passing the order of detention. Therefore, in view of the above judgement relied upon by the learned advocate for the petitioner, the order of detention is illegal and the same cannot be sustained. Learned advocate for the petitioner does not press any other points"

3. In the instant case, the State has not filed any reply explaining the delay in any manner. As such no reply has been filed at all. In that view of the matter, the averment of the petitioner is required to be accepted as it is uncontroverted. In that view of the matter, the petition is required to be allowed on the ground of delay in passing the order of detention and accordingly the detention order is required to be quashed and set aside.

4. For the foregoing reasons, the petition is allowed. The order of detention dated 14-11-2002 is quashed and set aside. The detenue, Smt. Bhanubahen wf/o. Uttambhai Chhaganbhai Patel, is ordered to be set

at liberty forthwith, if she is not required in connection with any other case. Rule is made absolute.

Sd/-

[P.B.MAJMUDAR,J]

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'Bhavesh'